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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE PRISONERS ACT, 1871,

AS MODIFIED UP TO THE 1ST MAY, 1894.

2421

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1894.

Price Five Annas and Six Pies.

CALCUTTA:
GOVERNMENT OF INDIA CENTRAL PRINTING OFFICE,
8, HASTINGS STREET.

STATEMENT OF REPEALS AND AMENDMENTS.

REPEALED IN PART	ACT XII OF 1873;
	ACT XVI OF 1874.
REPEALED IN PART AND AMENDED	ACT VII OF 1894.
AMENDED	ACT IX OF 1882;
	ACT X OF 1886, s, 25;
	ACT XII OF 1891.

The following changes have been made in reprinting the Act:—

(1) repealed matter has been omitted, explanatory notes being inserted;

(2) amendments have been inserted in their proper places, with explanatory foot-notes;

(3) some further foot-notes have been added for convenience of reference;

(4) the number and year of Acts referred to in the text have been noted in the inner margin, except where both appear in the text;

(5) section-numbers occurring in the text have been printed in figures instead of in words;

(6) the headings to the pages have been amplified.

CONTENTS.

PREAMBLE.

SECTIONS.

I.—PRELIMINARY.

1. Short title.
   Local extent.
2. [*Repealed.*]

II.—PRISONERS IN THE PRESIDENCY-TOWNS.

3. Warrants and writs to be directed to Police-officers.
4. Power to appoint Superintendents of Presidency prisons.
5. Superintendents to detain persons committed.
6. Superintendents to return writs, etc., after execution or discharge.
7. Delivery of persons sentenced to imprisonment or death.
8. Delivery for intermediate custody of persons sentenced to transportation or penal servitude.
9. [*Repealed.*]
10. Committals by High Court in execution of a decree or for contempt.
11. Delivery of persons sentenced by Police Magistrate.
12. Delivery of persons committed by Justice or Magistrate or Coroner for trial by High Court.
13. Custody pending enquiries under section 350 of the Code of Civil Procedure.
14. Delivery of persons arrested in pursuance of warrant of High Court or Small Cause Court.
15. Warrants under Regulations for confinement of State prisoners.

III.—PRISONERS IN THE MUFASSAL.

16. Officers in charge of prisons may give effect to sentences of certain Courts.
17. Warrant of officer of such Court to be sufficient authority.
18. Procedure where jailor doubts the legality of warrant sent to him for execution.
19. Imprisonment in British India of persons convicted of certain offences in Native States.
    Proviso.
20. Certificate of conviction.
    Copy of proceedings.

IV.—CONVICTS

IV.—CONVICTS SENTENCED TO PENAL SERVITUDE.

SECTIONS.

21. Persons sentenced to penal servitude where sent, and how dealt with.
Intermediate imprisonment.
Time of intermediate imprisonment to count in discharge of sentence.
22. Law respecting convicts sentenced to transportation or imprisonment with hard labour applied to persons sentenced to penal servitude.
23. Power to grant license to convict sentenced to penal servitude.
24. Holder of license to be allowed to go at large.
25. Apprehension of convict where license revoked.
26. Execution of warrant.
27. Apprehended convict to be brought up for re-commitment.
28. Re-commitment.
29. Penalty for breach of condition of the license.

V.—REMOVAL OF PRISONERS.

30. Removal from one jail to another in territories under same Local Government.
31. Removal of lunatic prisoners.
32. Removal of prisoners from territories under one Local Government to territories under another.

VI.—MANAGEMENT OF TRANSPORTED CONVICTS.

33. Governor General in Council to appoint places to which persons sentenced to transportation shall be sent.
Local Government to direct removal of such persons to places appointed.
34. Power to make rules as to convicts.

VII.—DISCHARGE OF CONVICTS.

35. Discharge of convicts recommended for pardon.

SCHEDULE.

[ACTS REPEALED.]

Repealed.

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ACT No. V OF 1871.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the Governor General's assent on the 27th January, 1871.)

An Act to consolidate the laws relating to Prisoners confined by order of a Court.

As modified up to the 1st May 1894.

FOR the purpose of consolidating the laws relating to prisoners confined by order of a Court; It is hereby enacted as follows :— Preamble.

I.—PRELIMINARY.

1. This Act may be called the Prisoners Act, 1871: Short title.

It extends to the whole of British India. [a] Local extent.

[*Commencement.*] *Repealed by Act XVI of 1874.*

[b] Any reference in Part III or Part V of this Act to a prison or jail, or to imprisonment or confinement, may be read as referring to a reformatory or reformatory school or to confinement therein.

2. [*Repeal of Acts.*] *Repealed by Act XII of 1873.*

II.—PRISONERS IN THE PRESIDENCY-TOWNS.

3. All writs or warrants for the arrest or apprehension of any person, issued or awarded by the High Court in the exercise of its ordinary, extraordinary Warrants and writs to be directed to Police-officers.

[a] Act V of 1871 has been declared in force in Upper Burma generally (except the Shan States), by Act XX of 1886, s. 6 [Burma Code, Ed. 1889], in the Arakan Hill District (except ss. 2-15), by Reg. IX of 1874, s. 3 [Burma Code, Ed. 1889], in the Sonthal Parganas, by Reg. III of 1872, s. 3, as amended by Reg. III of 1886 [Bengal Code, Vol. I, Ed. 1889], in British Baluchistan, by Reg. I of 1890, s. 3 [Baluchistan Code, Ed. 1890], and in Angul and the Khondmals, by Reg. I of 1894, s. 3.

It has been declared, by notification under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts, namely :—the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dalbhum and the Kolhan in the District of Singhbhum [Gazette of India, 1881, Pt. I, p. 504]; and it has been extended, by notification under the same Act, to the North-Western Provinces Tarai [Gazette of India, 1876, Pt. I, p. 505].

[b] This paragraph was added by Act VII of 1894, s. 1.

dinary or other criminal jurisdiction shall be directed to and executed by any officer of Police within the local limits of such jurisdiction.

Power to appoint Superintendents of Presidency prisons.

4. The Local Government may appoint officers who shall have authority to receive and keep prisoners committed to their custody under the provisions of this Part.

All such officers appointed under any Act hereby repealed shall be deemed to be appointed under this Act.

Such officers shall be called, in Calcutta, the Superintendent of the Presidency Prison, in Madras, the Superintendent of Prisons for the town of Madras, and, in Bombay, by such title or respective titles as the Local Government from time to time directs.

Every such officer is hereinafter referred to as "the Superintendent."

Superintendents to detain persons committed.

5. The Superintendent is hereby authorized and required to keep and detain all persons duly committed to his custody pursuant to the provisions of this Act, or otherwise, by any Court, Judge, Justice of the Peace, Magistrate of Police, Coroner or other public officer lawfully exercising civil or criminal jurisdiction according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged by due course of law.

Superintendents to return writs, etc., after execution or discharge.

6. The Superintendent shall forthwith after the execution of every such writ, order or warrant, except warrants of commitment for trial, or after the discharge of the person committed thereby, return such writ, order or warrant to the Court or other officer by which or by whom the same has been issued or made, together with a certificate endorsed thereon and signed by the Superintendent, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

7. Whenever

7. Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the said Superintendent, together with the warrant of the said Court, and such warrant shall be executed by the Superintendent and returned by him to the High Court when executed.

Delivery of persons sentenced to imprisonment or death.

8. Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the imprisonment of such person shall have effect from such delivery.

Delivery for intermediate custody of persons sentenced to transportation or penal servitude.

9. [*Order under Mutiny Act for intermediate custody.*] *Repealed by Act VII of 1894, s. 2.*

10. Whenever any person is committed by the High Court, whether in execution of a decree or for contempt of Court, or other cause, he shall be taken by the officer to be appointed for that purpose by such Court, and shall be delivered to the Superintendent, together with a warrant of commitment.

Committals by High Court in execution of a decree or for contempt.

11. Whenever any person is sentenced by a Magistrate of Police [a] for the town of Calcutta, Madras or Bombay, to imprisonment, either absolutely or for default of payment of any fine imposed by any such Magistrate, or is committed to prison for failure to find security to keep the peace and to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with a warrant of the Court.

Delivery of persons sentenced by Police Magistrate.

12. Every person committed by a Justice of the Peace or Magistrate or Coroner for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing him to have the body of such person before the Court for trial, and the Superintendent shall, as soon as practicable,

Delivery of persons committed by Justice or Magistrate or Coroner for trial by High Court.

[a] *Now read* Presidency Magistrate—see Act X of 1882, s. 3. (For Act X of 1882 see the revised edition, as modified up to 15th December, 1888, published by the Legislative Department.)

cable, cause such person to be taken before the Court at a criminal session of the said Court, together with the warrant of commitment, in order that he may be dealt with according to law.

Custody, pending enquiries under section 350 of the Code of Civil Procedure.

13. Pending any such enquiry as is mentioned in [a]section 350 of the Code of Civil Procedure[a] which the High Court considers it necessary to make, the defendant may be delivered by the officer of the said Court to the Superintendent, subject to [b]the provisions as to release on security contained in section 349 of the same Code,[b] XIV of 1882.

and the Superintendent is hereby authorised and required to detain such defendant in safe custody until he is re-delivered to the officer of the Court for the purpose of being taken before the said Court in pursuance of an order of the said Court or of a Judge thereof, or until he is released by due course of law.

Delivery of persons arrested in pursuance of warrant of High Court or Small Cause Court.

14. Every person arrested in pursuance of a writ, warrant. or order of the High Court, in the exercise of its original civil jurisdiction,

[c] or in pursuance of a warrant of any Civil Court established in Calcutta, Madras or Bombay under any law for the time being in force,[c]

or in pursuance of a warrant issued under section 3 of this Act,

shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant or order was issued, awarded or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction;

and if such Court, or a Judge thereof, is not then sitting

[a-a] This reference was substituted for the original reference by Act XII of 1891. For Act XIV of 1882 see the revised edition, as modified up to 1st July, 1888, published by the Legislative Department.

[b-b] These words, etc., were substituted for the original words by Act XII of 1891.

[c-c] These words were substituted for the original words by Act VII of 1894, s. 3.

sitting for the exercise of original jurisdiction, shall, unless a Judge of the said Court otherwise orders, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court, or a Judge thereof, at the next sitting of the said Court or of a Judge thereof, for the exercise of original jurisdiction, in order that such person may be dealt with according to law;

and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

Warrants under Regulations for confinement of State prisoners.

15. Any warrant of commitment under Regulation III of 1818 [a] of the Bengal Code (*for the Confinement of State Prisoners*), Regulation II of 1819 [b] of the Madras Code (*for the Confinement of State Prisoners*), and Regulation XXV of 1827 [c] of the Bombay Code (*for the Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others, for Reasons of State*), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV of 1850 [d] (*for the better Custody of State Prisoners*), and Act No. III of 1858 [d] (*to amend the Law relating to the arrest and detention of State Prisoners*).

III.—Prisoners in the Mufassal.

Officers in charge of prisons may give effect to sentences of certain Courts.

16. Officers in charge of prisons situate outside the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay shall be competent to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court

[a] Printed in Bengal Code, Vol. I, Ed. 1869.
[b] Printed in Madras Code, Ed. 1888.
[c] Printed in Bombay Code, Ed. 1880.
[d] Printed in General Acts, 1834-66, Ed. 1887.

Court or tribunal [a]acting, whether within or without British India, under the general or special authority[a] of Her Majesty or of the Governor General in Council, or of any Local Government, [b]or, with the previous sanction of the Governor General in Council in each case, to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal of any Native Prince or State under the suzerainty of Her Majesty.

Where a Court or tribunal of such a Native Prince or State has passed a sentence which cannot be executed without the concurrence of an officer of the British Government, and such sentence has been judicially considered on the merits and confirmed by any such officer specially authorised by name or by office in that behalf, such sentence, and any order or warrant issued in pursuance thereof, shall be deemed to be the sentence, order or warrant of a Court or tribunal acting under the authority of the Governor General in Council.[b]

Warrant of officer of such Court to be sufficient authority.

17. A warrant under the official signature of an officer of such Court or tribunal shall be sufficient authority for holding any prisoner in confinement, or for sending any prisoner for transportation beyond sea, in pursuance of the sentence passed upon him.

Procedure where jailor doubts the legality of warrant sent to him for execution.

18. Any officer in charge of a prison doubting the legality of any warrant sent to him for execution under this Part, or the competency of the person whose official seal and signature are affixed thereto to pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order on the case such officer and all other public officers shall be guided as to the future disposal of the prisoner.

Pending any such reference, the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant.

19. The

[a-a] These words were substituted for the original words by Act VII of 1894, s. 4(*1*).

[b-b] This portion was added by Act VII of 1894, s. 4(*2*).

(*III.—Prisoners in the Mufassal.—Section 19.*)

Imprisonment in British India of persons convicted of certain offences in Native States.

19. [a] The Governor General in Council or the Local Government may authorise the reception, detention or imprisonment in any place in British India, or in any place under such Government, as the case may be, for the period specified in their respective sentences, of persons sentenced within the territories of any Native Prince or State under the suzerainty of Her Majesty to imprisonment or transportation for any of the following offences[a]:—

counterfeiting coin,

uttering counterfeit coin,

murder,

culpable homicide not amounting to murder,

being a thug,

voluntarily causing grievous hurt,

administering poison,

kidnapping,

selling minors for purposes of prostitution,

rape,

robbery,

dacoity,

dacoity with murder,

robbery or dacoity with attempt to cause death or grievous hurt,

attempt to commit robbery or dacoity when armed with a deadly weapon,

making preparation to commit dacoity,

belonging to a gang of dacoits,

dishonest misappropriation of property,

breach of trust,

house-burning,

house-breaking,

forgery,

[a-a] These words were substituted for the original words by Act VII of 1894, s. 5(*1*).

(*III.—Prisoners in the Mufassal.—Section 20. IV.—Convicts sentenced to Penal Servitude.—Section 21.*)

forgery, and

theft of cattle;

[a] or for any other act (referred to in this section as an offence) which would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code [b] mentioned in the schedule to the Foreign Jurisdiction and Extradition Act, [c] 1879, [a]

XLV of 1860.
XXI of 1879.

or for an attempt to commit any of the above offences,

or for abetment, within the meaning of the Indian Penal Code, of suicide by burning or burying alive, or of any of the other offences above specified,

or for such other offences as the Governor General in Council, from time to time, by order published in the Gazette of India, thinks fit to prescribe:

Proviso.

[d] Provided that such sentences have been pronounced after trial before a tribunal of which the presiding Judge, or, if the Court consisted of more than one Judge, at least one of such Judges, was an officer of the British Government authorised to act as such Judge by the Native Prince or State or by the Governor General in Council.

Certificate of conviction.

Copy of proceedings.

20. Every officer of Government so authorized as aforesaid shall forward with every prisoner a certificate of his conviction, and a copy of the proceedings held at the trial, that the same may be forthcoming for reference at the place where the sentence of imprisonment or transportation is carried into effect.

IV.—CONVICTS SENTENCED TO PENAL SERVITUDE.

Persons sentenced to penal servitude where sent, and how dealt with.

21. Every person sentenced to be kept in penal servitude may, during the term of the sentence, be confined

[a-a] This portion was inserted by Act VII of 1894, s. 5 (*2*).

[b] For Act XLV of 1860 see the revised edition, as modified up to 1st August, 1890, published by the Legislative Department.

[c] Printed in General Acts, 1877-81, Ed. 1884.

[d] This proviso was substituted for the original proviso by Act VII of 1894, s. 5 (*3*).

confined in such prison within British India as the Governor General in Council by general order, from time to time, directs;

and may, during such time, be kept to hard labour;

and may, until he can conveniently be removed to such prison, be imprisoned, with or without hard labour, and dealt with in all other respects as persons sentenced by the convicting Court to rigorous imprisonment may, for the time being, by law be dealt with.

Intermediate imprisonment.

The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence.

Time of intermediate imprisonment to count in discharge of sentence.

22. All Acts and Regulations now in force within British India, with respect to convicts under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as may be consistent with the express provisions of this Act, be construed to apply to persons under any sentence of penal servitude.

Law respecting convicts sentenced to transportation or imprisonment with hard labour applied to persons sentenced to penal servitude.

23. The Governor General in Council may grant to any convict sentenced to be kept in penal servitude a license to be at large within British India or in such part thereof as in such license is expressed, during such portion of his term of servitude and upon such conditions as to the Governor General in Council seem fit.

Power to grant license to convict sentenced to penal servitude.

The Governor General in Council may at any time revoke or alter such license.

24. So long as such license continues in force and unrevoked, such convict shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of such license.

Holder of license to be allowed to go at large.

25. In case of the revocation of any such license as aforesaid, any Secretary to the Government of India may,

Apprehension of convict where license revoked.

may, by order in writing, signify to any Justice of the Peace or Magistrate that such license has been revoked, and require him to issue a warrant for the apprehension of the convict to whom such license was granted, and such Justice or Magistrate shall issue his warrant accordingly.

Execution of warrant.

26. Such warrant may be executed by any officer to whom it may be directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subsequently endorsed by the Justice of the Peace or Magistrate or other authority having jurisdiction in the place where the same is executed.

Apprehended convict to be brought up for re-commitment.

27. The convict, when apprehended under such warrant, shall be brought, as soon as conveniently may be, before the Justice or Magistrate by whom it has been issued, or before some other Justice or Magistrate of the same place or before a Justice or Magistrate having jurisdiction in the district in which the convict is apprehended.

Such Justice or Magistrate shall thereupon make out his warrant under his hand and seal, for the re-commitment of the convict to the prison from which he was released by virtue of the said license.

Re-commitment.

28. Such convict shall be re-committed accordingly, and shall thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

Penalty for breach of condition of the license.

29. If a license be granted under section 23 upon any condition specified therein, and the convict to whom the license is granted violates any such condition,

or

or goes beyond the limits specified in the license,

or, knowing of the revocation of such license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid being apprehended,

he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

V.—Removal of Prisoners.

Removal from one jail to another in territories under same Local Government.

[a] **30.** When any person is, or has been, sentenced to imprisonment or transportation by any Court, or, in default of giving security for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, [b] the Local Government or (subject to its orders and under its control) the Inspector General of Prisons may order his removal during the period for which he has been sentenced to imprisonment or transportation or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of confinement within the territories subject to the same Local Government.

X of 1882.

Removal of lunatic prisoners.

[c] **31.** (*1*) Whenever it appears to the Local Government that any person detained or imprisoned under any order or sentence of any Magistrate or Court is of unsound mind, that Government, by a warrant setting forth the grounds of belief that the person is of unsound mind, may order his removal to a lunatic asylum or other place of safe custody within the territories subject to the same Local Government, there to be kept and treated as the Local Government directs during the remainder of the term for

[a] This section was, by Act VII of 1894, s. 6, substituted for the s. 30 enacted by Act X of 1886, s. 25.

[b] For Act X of 1882 see the revised edition, as modified up to 15th December, 1888, published by the Legislative Department.

[c] This section was substituted for the original s. 31 by Act X of 1886, s. 25, printed in General Acts, 1885-88, Ed. 1889.

for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(*2*) When it appears to the Local Government that the prisoner has become of sound mind, that Government, by a warrant directed to the person having charge of the prisoner, shall, if the prisoner is still liable to be kept in custody, remand him to the prison from which he was removed or to another prison within the territories subject to the same Local Government, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(*3*) The provisions of section 9 of Act XXXVI of 1858 [*] (*relating to Lunatic Asylums*) shall apply to every person confined in a lunatic asylum under sub-section (*1*) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Magistrate or Court to undergo.

(*4*) In any case in which a Local Government is competent under sub-section (*1*) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the territories subject to the same Local Government, the Governor General in Council may order his removal to any lunatic asylum or other place of safe custody in any part of British India; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of a Local Government shall, so far as they can be

[*] Printed in General Acts, 1 834-66, Ed. 1887.

be made applicable, apply to a prisoner removed by order of the Governor General in Council.

Removal of prisoners from territories under one Local Government to territories under another.

[a] 32. When any person is, or has been, sentenced to imprisonment or transportation by any Court, or, in default of giving security for maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, [b] the Governor General in Council may order his removal during the period for which he has been sentenced to imprisonment or transportation or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of confinement in British India.

X of 1882.

VI.—MANAGEMENT OF TRANSPORTED CONVICTS.

Governor General in Council to appoint places to which persons sentenced to transportation shall be sent. Local Government to direct removal of such persons to places appointed.

[c] 33. The Governor General in Council may, from time to time, appoint places within British India to which persons sentenced to transportation shall be sent; and the Local Government, or some officer duly authorized in this behalf by the Local Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence.

Power to make rules as to convicts.

34. The Governor General in Council may, from time to time, prescribe rules as to the following matters:—

the classification of convicts;

their

[a] This section was, by Act VII of 1894, s. 7, substituted for the s. 32 enacted by Act X of 1886, s. 25.

[b] For Act X of 1882 see the revised edition, as modified up to 15th December, 1888, published by the Legislative Department.

[c] This section was substituted for the original s. 33 by Act IX of 1882, s. 2, printed in General Acts, 1882, Part I, Ed. 1885.

their confinement, treatment, discipline and employment;

their punishment for misbehaviour, disorderly conduct, neglect or disobedience; and

the manner in which the proceeds (if any) of their employment shall be disposed of.

VII.—DISCHARGE OF CONVICTS.

Discharge of convicts recommended for pardon.

35. Any Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four [a], may, in any case in which it has recommended to Her Majesty the granting of a free pardon to any convict, permit him to be at liberty on his own recognizance.

SCHEDULE.

[ACTS REPEALED.]

Repealed by Act XII of 1873.

[a] Printed in the Collection of Statutes relating to India, Vol. II, Ed. 1881.

Government of India Central Printing Office.—No. 567 L. D.—18-5-94.—4,500.